

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**COLDEN KIMBER, on behalf of the
State of California, as a private attorney
general,**

Plaintiff,

v.

**THE SPORTS BASEMENT, INC. and
DOES 1 through 50, inclusive,**

Defendants.

Case No.: SACV 23-02441-CJC (ADSx)

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND [Dkt. 12]**

I. INTRODUCTION

Plaintiff Colden Kimber, on behalf of the people of the State of California and as an aggrieved employee acting as a private attorney general under California's Labor Code Private Attorney General Act of 2004 ("PAGA"), brings this action against Defendant The Sports Basement, Inc. and unnamed Does seeking to recover PAGA

1 penalties for himself and on behalf of all current and former aggrieved employees that
2 worked for Defendant. (*See* Dkt. 1-1 [Compl.].) Plaintiff originally brought this action
3 in Orange County Superior Court, but Defendant subsequently removed the action,
4 invoking the Court’s federal question jurisdiction. (*See* Dkt. 1 [Notice of Removal,
5 hereinafter “Notice”].) Now before the Court is Plaintiff’s motion to remand for lack of
6 subject matter jurisdiction. (*See* Dkt. 12 [Memorandum of Points and Authorities in
7 Support, hereinafter “Mot.”].) For the following reasons, Plaintiff’s motion is **DENIED**.¹

8 9 **II. BACKGROUND**

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11 Defendant is an outdoor gear and apparel store in California. (Compl. ¶ 5.) At all
12 relevant times, Defendant has had its headquarters and principal place of business in the
13 Presidio of San Francisco. (Dkt. 13 [Opposition to Plaintiff’s Motion to Remand,
14 hereinafter “Opp.”] at 12.) Its headquarters in the Presidio employed non-exempt
15 employees. (*Id.*)

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17 Plaintiff alleges that Defendant employed him from October 25, 2021 to June 20,
18 2023 as a non-exempt employee. (Compl. ¶ 6.) During this period, Plaintiff claims that
19 Defendant, on a companywide basis, failed to comply with California’s labor laws. For
20 instance, Plaintiff asserts that Defendant had a “policy and practice not to pay . . . for all
21 time worked.” (*Id.* ¶ 11.) The policies and practices underlying Plaintiff’s claim include,
22 among other things, working while clocked out during what were supposed to be off-duty
23 meal breaks, a uniform practice of rounding actual time worked always to Defendant’s
24 benefit, and requiring as a condition of employment off-the-clock work for mandatory
25 temperature checks and symptom questionnaires for COVID-19 screening prior to
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28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing
scheduled for February 26, 2024, is vacated and removed from the calendar.

clocking into Defendant's timekeeping system for the workday. (*Id.*) Plaintiff also takes issue with Defendant's "non-discretionary incentive program." (*Id.* ¶ 13.) Allegedly, Defendant "failed to include the incentive compensation as part of the employees' 'regular rate of pay' for purposes of calculating overtime pay and meal and rest break premium pay." (*Id.*) Management described the incentive program to potential and new employees as part of their compensation package. (*Id.*) Plaintiff also alleges Defendant failed to provide its employees with complete and accurate wage statements. (*Id.* ¶¶ 17–18.) In short, Plaintiff asserts that, companywide as a matter of policy and practice, Defendant consistently violated a wide variety of California labor laws.

III. LEGAL STANDARD

"Federal courts are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (citation omitted). A federal district court has jurisdiction over a civil action removed from state court only if the action could have been brought in the federal court originally. *See* 28 U.S.C. § 1441(a). Federal courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. *Id.* § 1331. Thus, for an action to be removed based on federal question jurisdiction, the complaint must establish either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on the resolution of substantial questions of federal law. *See Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 10-13 (1983). "The 'strong presumption' against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." *Gaus*, 980 F.2d at 566. "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Id.* "[T]he subject matter jurisdiction of the district court is not a waivable matter and may be raised at anytime by one of the parties, by motion or

1 in the responsive pleadings, or *sua sponte* by the trial or reviewing court.” *Emrich v.*
 2 *Touche Ross & Co.*, 846 F.2d 1190, 1194 n.2 (9th Cir. 1988).

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 4 A removing defendant must file with the federal district court “a notice of removal
 5 . . . containing a short and plain statement of the grounds for removal.” 28 U.S.C.
 6 § 1446(a). In other words, “the defendant must state the basis for removal jurisdiction in
 7 the [notice of] removal.” *O’Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1381 (9th Cir.
 8 1988). Though the notice “cannot be amended to add a separate basis for removal
 9 jurisdiction after the thirty day period” to remove under 28 U.S.C. § 1446(b) elapses, *id.*,
 10 it can be amended outside that window “to correct a ‘defective allegation of
 11 jurisdiction.’” *ARCO Emt. Remediation, L.L.C. v. Dep’t of Health & Emt. Quality*, 213
 12 F.3d 1108, 1117 (9th Cir. 2000) (quoting 28 U.S.C. § 1653). Still, a court may deny
 13 leave to amend a pleading if “it is clear . . . that [it] could not be saved by amendment,”
 14 *Snell v. Cleveland, Inc.*, 316 F.3d 822, 828 n.6 (9th Cir. 2002), or “if there is strong
 15 evidence of ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated
 16 failure to cure deficiencies by amendments previously allowed, undue prejudice to the
 17 opposing party by virtue of allowance of the amendment, [or] futility of amendment,
 18 etc.’” *Sonoma Cnty. Ass’n of Retired Empls. v. Sonoma County*, 708 F.3d 1109, 1117
 19 (9th Cir. 2013) (alteration in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182
 20 (1962)).

21 22 **IV. DISCUSSION**

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 24 Defendant asserts that this Court has federal question jurisdiction over this matter
 25 because Plaintiff’s allegations against Defendant arise from Defendant’s alleged conduct
 26 within a federal enclave. (Notice ¶ 9.) “Federal law governs on a federal enclave, along
 27 with state laws, not inconsistent with federal policy, enacted before the federal enclave
 28 was established.” *Total v. Bies*, 2011 WL 1324471, at *2 (N.D. Cal. Apr. 6, 2011). Any

1 “assimilated state law is distinctly federal in nature, and its application establishes the
2 basis for federal question jurisdiction.” *Swords to Plowshares v. Kemp*, 423 F. Supp. 2d
3 1031, 1038 (N.D. Cal. 2005).

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5 Since 2003, Defendant’s flagship store, its corporate headquarters and principal
6 place of business, has been in the Presidio of San Francisco, a federal enclave located
7 within the State of California. (*Id.* ¶ 10); *see Totah*, 2011 WL 1324471, at *2 (“The
8 United States acquired exclusive jurisdiction over the Presidio in 1897, establishing it as
9 a federal enclave.”). And since 2003, Defendant’s flagship store in the Presidio has
10 continuously employed non-exempt employees who are impacted by Defendant’s
11 policies and practices at issue in this case. (Notice ¶ 11.) Plaintiff does not dispute that
12 the Presidio is a federal enclave or that Defendant employed non-exempt employees on
13 behalf of which Plaintiff pursues this case. (*See* Mot. at 4–5 [conceding the existence of
14 the Presidio location]; Dkt. 14 [Reply in Support of Motion to Remand, hereinafter
15 “Reply”] at 3 [conceding some number of aggrieved employees worked at the Presidio].)

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17 Instead, Plaintiff argues this Court lacks jurisdiction because Defendant “failed to
18 demonstrate Presidio is the locus, or majority location, of Plaintiff’s claims.” (Mot at 5.)
19 Some courts have held that federal enclave doctrine applies only when the locus in which
20 the claim arose is the federal enclave itself—that is to say, when “the majority of the
21 pertinent events took place on a federal enclave.” *See Jamil v. Workforce Res., LLC*,
22 2018 WL 2298119, at *4 (S.D. Cal. May 21, 2018) (collecting cases). Plaintiff claims
23 that because “it is estimated that only 1/12th of the aggrieved employees worked at the
24 Presidio during the relevant time period,” then, mathematically, the Presidio is not the
25 “locus” of Plaintiff’s case. (Reply at 3–4.)

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27 This framing ignores the representative nature of the case Plaintiff seeks to pursue.
28 Courts conduct “jurisdictional analysis on a claim-by-claim basis.” *Martinez v. Clark*, 36

1 F.4th 1219, 1226 (9th Cir. 2022). The relevant question, even under Plaintiff’s framing
 2 of the locus test, is where each aggrieved employee worked the most. For the aggrieved
 3 employees working at the Presidio location, the majority, if not all, of their work took
 4 place in the Presidio—a federal enclave. Therefore, federal law governs the violations
 5 regarding the aggrieved employees who worked at Defendant’s flagship store in the
 6 Presidio. Notably, after Defendant removed this case based on the Presidio’s status as a
 7 federal enclave, Plaintiff expressly stated that he continues to assert claims for employees
 8 who worked at the flagship store. (Opp. at 13); *see Jimenez v. CRC Prop. Mgmt. W. Inc.*,
 9 2021 WL 4312622, at *3 (S.D. Cal. Sept. 21, 2021) (denying motion to remand PAGA
 10 case when “Plaintiff makes no concession to amend the Complaint to exclude claims
 11 arising from work performed on the federal enclave”).

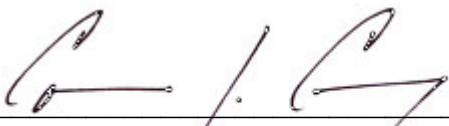
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 13 Because the Court has federal question jurisdiction over the claims involving
 14 Defendant’s flagship store, it may exercise supplemental jurisdiction over the remainder
 15 of the claims stemming from aggrieved employees who worked at Defendant’s stores in
 16 other locations in California. In an action over which a district court possesses original
 17 jurisdiction, that court “shall have supplemental jurisdiction over all other claims that are
 18 so related to claims in the action within such original jurisdiction that they form part of
 19 the same case or controversy under Article III of the United States Constitution.” 28
 20 U.S.C. § 1367(a). Plaintiff alleges that the purported labor law violations occurred at all
 21 of Defendant’s stores and that those violations are based on companywide policies and
 22 practices. There is no real question that the violations that allegedly took place in the
 23 Presidio are part of the same case or controversy as violations that allegedly took place
 24 elsewhere. Therefore, the Court exercises supplemental jurisdiction over Plaintiff’s
 25 claims based on aggrieved employees that worked at Defendant’s non-Presidio locations.
 26 *See Jimenez*, 2021 WL 4312622, at *8 (holding in a PAGA case that “this Court has
 27 original jurisdiction over claims arising from events that took place on Pacific Beacon
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1 and supplemental jurisdiction over claims arising from events that took place at non-
2 enclave locations”).

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4 **V. CONCLUSION**

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6 For the foregoing reasons, Plaintiff’s motion to remand is **DENIED**.

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9 DATED: February 22, 2024

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12 CORMAC J. CARNEY
13 UNITED STATES DISTRICT JUDGE
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